Filed 10/7/04 P. v. Porchia CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. GWENDOLYN PORCHIA, Defendant and Appellant.	B170631 (Los Angeles County Super. Ct. No. BA242659)

APPEAL from a judgment of the Superior Court of Los Angeles County. Paul M. Enright, Temporary Judge. (Pursuant to Cal. Const., art VI, § 21.). Affirmed.

Carol S. Boyk, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General of the State of California, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter, Supervising Deputy Attorney General, and Shawn McGahey Webb, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Gwendolyn Porchia was convicted, following a jury trial of two counts of maintaining a place for the sale or use of a controlled substance in violation of Health and Safety Code section 11366 and one count of selling, transporting or offering a controlled substance for sale in violation of section 11352, subdivision (a). The trial court sentenced appellant to four years in state prison for the section 11352 conviction, and sentenced her concurrently for the two section 11366 convictions.

Appellant appeals from the judgment of conviction, contending that this Court should independently review the personnel files produced in response to appellant's *Pitchess*[1] motion, and further contending that there is insufficient evidence to support one of the drug house convictions. Appellant also contends that the trial court erred in failing to instruct the jury on the meaning of the phrase "opening and maintaining." We affirm the judgment of conviction.

Facts

On January 30, 2003, at about 11:30 a.m., Detective Robert Morales and members of the Los Angeles Police Department's Narcotics Division executed a search warrant at appellant's apartment at 724 West 75th Street in Los Angeles. Present at the apartment were appellant, her ten-year-old son T.D., her brother Anthony Porchia, two of Anthony's friends, and a Ms. Bryant, who lived there.

Officer Michael Fletcher advised appellant of her *Miranda* rights, which she waived. He asked her if she had anything inside her apartment that she shouldn't have that she needed to advise the police about. Appellant responded that if there were any drugs inside the apartment, they belonged to her adult son Brandon Smith. Officer Fletcher had not mentioned anything about drugs to appellant before she made that comment. When Detective Morales spoke with appellant soon thereafter, she said that there were no drugs in the house.

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[1] *Pitchess* v. *Superior Court* (1974) 11 Cal.3d 531.

Officers found 32 baggies of marijuana inside a chest of drawers located in the hall of appellant's apartment. Each baggie contained $5 or $10 worth of marijuana. Two digital scales were found in the kitchen. One scale was in plain view and was sitting next to a plastic shopping bag which contained marijuana residue. Both scales were of a type commonly used by drug dealers.

Appellant, who was unemployed and living on public assistance, had $1,203 in cash in her handbag. The cash included seventeen $5 bills. Detective Morales opined that the cash was the proceeds from the sale of marijuana.

Appellant was arrested for possession of marijuana for sale. She was later released, and that charge dismissed, after Brandon Smith appeared at the police station and convinced police that the marijuana was his.

At about 7:20 p.m. on March 12, 2003, Los Angeles Police Officers returned undercover to 724 West 75th. Officer Zavala watched the apartment and saw an older Hispanic man park his bicycle and walk up to the apartment. At the same time, Officer Saragueta parked his unmarked car and walked up to the apartment.

Appellant came out onto the porch and asked the Hispanic man what he wanted. The man replied "Twenty," and gave appellant $20. Appellant handed him three small off-white objects resembling cocaine. Appellant's brother, Anthony Porchia, came out of the apartment. The Hispanic man left.

Officer Saragueta stepped forward. Porchia asked him what he wanted. Officer Sargueta replied "Twenty-five," and gave Porchia $25. Porchia gave Officer Saragueta five pieces of rock cocaine. Officer Saragueta left.

Officer Zavala observed Porchia kneel down at the west wall of the porch, then stand back up. Appellant went inside.

Officer Zavala directed uniformed officers to the location. The officers found $209 on Porchia, including the bills used by Officer Saragueta. Appellant had $362 in her purse. Officers found a plastic bag containing numerous pieces of rock cocaine in a water drain in the porch area.

At trial, appellant denied mentioning drugs to police on January 30, and also denied knowing that Brandon had stashed marijuana in her apartment. She did not use her kitchen much and was not aware that there were digital scales there.

On March 12, appellant arrived home at about 6:00 p.m., went inside the apartment, and sat on the couch. She did not go out onto the porch or sell drugs to anyone.

Appellant's sixteen-year old son Roshon D. testified that on March 12, appellant sat next to him on the couch from 6:00 p.m. to 7:00 p.m. Roshon did not see appellant possess or sell any drugs on that date. Roshon also testified that no one used the chest of drawers in the hallway where the marijuana was found.

Discussion

1. *Pitchess* motion

Appellant requests that this Court conduct an independent review of the in-camera proceeding done by the trial court in response to appellant's *Pitchess* motion for discovery of peace officer personnel records.

When requested to do so by an appellant, an appellate court can and should independently review the transcript of the trial court's in camera *Pitchess* hearing to determine whether the trial court disclosed all relevant complaints. (*People* v. *Mooc* (2001) 26 Cal.4th 1216, 1229.)

We have reviewed the transcript of the in camera proceeding and see no error in the trial court's ruling that there were two discoverable complaints.

2. Sufficiency of the evidence

Appellant contends that there is insufficient evidence to show that she opened or maintained a drug house on January 30 to use, sell or give away marijuana. We do not agree.

Section 11366 prohibits opening or maintaining any place "for the purpose of unlawfully selling, giving away, or using any [specified] controlled substance."

In reviewing the sufficiency of the evidence, "courts apply the 'substantial evidence' test. Under this standard, the court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*People* v. *Cuevas* (1995) 12 Cal.4th 252, 260-261.) The reviewing court must "presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment." (*People* v. *Mincey* (1992) 2 Cal.4th 408, 432.)

The standard of review is the same when the prosecution relies on circumstantial evidence to prove guilt. (*People* v. *Rodrigues* (1999) 20 Cal.4th 1, 11.) "'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.' [Citations.]" (*People* v. *Thomas* (1992) 2 Cal.4th 489, 514, citing *People* v. *Bean* (1988) 46 Cal.3d 919, 932-933.)

Two digital scales of the type commonly used by drug dealers were found in appellant's kitchen along with a plastic shopping bag containing marijuana residue. The marijuana found in the hall dresser was divided among 32 plastic baggies, each containing $5 to $10 worth of marijuana. It was reasonable to infer from this evidence that the marijuana was brought into the apartment in the shopping bag, and weighed and put into smaller baggies there. It was also reasonable to infer that the marijuana was packaged for distribution, not personal use. Further, Smith acknowledged his intent to sell or give away the marijuana.

Smith did not live full-time at appellant's apartment. He gave his primary residence as Junipero Street in Long Beach. It was reasonable to infer that Smith kept the marijuana at appellant's apartment rather than his Long Beach residence because he was in the process of distributing it from appellant's apartment.

When the police arrived, appellant volunteered that if there were any drugs in the house, they belonged to Smith. It is reasonable to infer from this statement that appellant was aware of Smith's marijuana activity, particularly since when police entered

appellant's kitchen, one scale and the plastic shopping bag were in plain view. It is also reasonable to infer that appellant consented to this activity.

3. Jury instruction

Appellant contends that the trial court erred in failing to instruct the jury, sua sponte, that the word "open," as used in section 11366, means "made available or accessible to others." Appellant concludes that without such an instruction, the jury might have believed that "open" was a synonym of "maintain" and merely required a "repetitive and continuing" activity. We do not agree.

"A word or phrase having a technical, legal meaning requiring clarification by the court is one that has a definition that differs from its nonlegal meaning." (*People* v. *Estrada* (1995) 11 Cal.4th 568, 574.) "When a term is commonly understood by those familiar with the English language and is not used in a technical legal sense peculiar to the law, an instruction as to its meaning is not required in the absence of a request." (*People* v. *Williams* (1988) 45 Cal.3d 1268, 1314; *People* v. *Rodriguez* (2002) 28 Cal.4th 543, 547.)

The definition proposed by appellant is one of the common meanings of the word "open." We see absolutely no need to instruct the jury with this definition. We also see no possibility that the jury would confuse the words "open" and "maintain." The words have quite different common meanings.

Appellant reliance on *People* v. *Vera* (1999) 69 Cal.App.4th 1100 to show error is misplaced. In that case, the Court of Appeal looked to Webster's Dictionary to confirm the meaning of the word "open" as used in section 11366. The Court's act does not create a requirement to instruct on the meaning of the word "open." To the contrary, it shows that no instruction is necessary because "open" has a non-technical, non-legal meaning as used in section 11366.

In her reply brief, appellant shifts ground and contends that the real problem with CALJIC No. 12.08 is that it does not make it clear that the distribution or use must occur on-site. We find the instruction quite clear on this point.

Disposition

The judgment is affirmed.

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ARMSTRONG, J.

We concur:

TURNER, P.J.

GRIGNON, J.